Cr.MMO No.54 of 2007.

5.10.2007. Present: Mr. Sandeep Sharma, Assistant Solicitor General of India, for the petitioner.

Mr. Ajay Kochhar, Advocate, for the respondent.

After hearing the learned counsel for the parties and on perusal of the impugned order dated 23rd March, 2007, I feel satisfied that the learned Court below wrongly, by incorrect appreciation of the facts and improper application of law declined the request of the petitioner for recalling of the witness PW-26 Dr. Sankhyan. I also feel that some observations made in the impugned order were uncalled for. Accordingly, the petition is allowed and the following order is passed:-

1. The observation in the penultimate para of the impugned order about the prosecution story being doubtful with respect to the date of the recovery of bullet is hereby expunged.
2. The impugned order is set aside in so far as it declined the request of the petitioner for recalling of the aforesaid witness. Consequently, it is ordered that PW-26 Dr. Sankhyan shall be recalled for recording his further statement in the Court in accordance with law. This however is subject to the condition that the petitioner obtains dasti summons for his service, and effects personal service upon him.

The petition is allowed and disposed of.

Cr.MP No.288 of 2007.

In view of the disposal of the main petition, this application shall also stand disposed of.

5th October, 2007. (V.K. Gupta), C.J.
(tr)